

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

KNOX
26900

FILE: B-213094

DATE: November 18, 1983

MATTER OF: Truesdale Construction Co., Inc.

DIGEST:

Protest that a bid bond not signed by the corporate surety's representative should not have been rejected by the contracting officer is summarily denied where there is a conflict among legal authorities regarding the effect of the lack of such a signature on the validity of a bond so that the agency could reasonably conclude that the bond may not be enforceable.

Truesdale Construction Co., Inc. protests the rejection of its bid under invitation for bids (IFB) No. N62467-82-B-4267 issued by the Department of the Navy for repairs to buildings at the Marine Corps Air Station, Beaufort, South Carolina. The agency found Truesdale's bid bond materially defective, and thus rejected its bid as nonresponsive, because the representative of the corporate surety failed to sign the bond. We summarily deny the protest.

The section of Truesdale's bid bond reserved for execution by the corporate surety appeared as follows:

CORPORATE SURETY(IES)

Name & Address	Lumbermens Mutual Casualty Company Long Grove, Illinois 60049
Signature(s)	1.
Name(s) & Title(s) (Typed)	1. Linda R. Councill Attorney-in-Fact

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Lumbermens' corporate seal was affixed to the bond in the space on the bond form reserved for the corporate surety's seal. In addition, a power of attorney appointing Linda R. Councill, among others, as Lumbermens' agent to "make, execute, seal, deliver . . . any and all bonds and undertakings" was attached to the bond. The attorney-in-fact failed to sign the bond.

Truesdale argues that there was no reason to reject its bid. Truesdale points out that it had properly signed both the bid and the bond, the bond was issued in the proper amount, and the bond was imprinted with Lumbermens' corporate seal. Further, Truesdale states, after bid opening the attorney-in-fact offered to go to the agency and sign the bond. Finally, Truesdale contends that the only purpose of requiring the submission of bid bonds is to insure the issuance of performance and payment bonds, and points out that Lumbermens has advised the agency that it will issue these bonds when Truesdale receives the award.

It is well-settled that a bid bond is a material part of the bid. 38 Comp. Gen. 532, 536 (1959); Baucom Janitorial Service, Inc., B-206353, April 19, 1982, 82-1 CPD 356. To view the bid bond requirement otherwise, so as to permit waiver of a bid bond requirement or of a failure to furnish a proper bid bond, would make it possible for a bidder to decide after opening whether or not to have its bid rejected, cause undue delay in effecting procurements, and create, through the subjective determinations by different contracting officers of whether waiver is appropriate, inconsistencies in the treatment of bidders. See Edw. Kocharian & Company, Inc.--request for modification, 58 Comp. Gen. 516, 518 (1979), 79-1 CPD 326. Thus, where a bidder supplies a defective bond, the bid itself is rendered defective and must be rejected as nonresponsive. Atlas Contractors, Inc., B-209446, March 24, 1983, 83-1 CPD 303, reversed for other reasons, Hancon Associates--Request for Reconsideration, B-209446.2, April 29, 1983, 83-1 CPD 460. The determinative question is whether the bidding documents establish that the bond could be enforced if the bidder did not execute the contract. A.D. Roe Company, Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD 194.

There is no consensus among legal authorities regarding the effect of a surety's failure to sign a bond. For example, there is some authority for the proposition that a bond sealed and delivered to the obligee is sufficient without the signature of the obligor. See 11 C.J.S. Bonds § 16 (1938); B-177407, February 26, 1973. On the other hand, some authorities, apparently relying on general principles of contract and suretyship law to the effect that a party may not be held liable on an instrument it has not signed, take the view that the signature of the surety's representative is a necessary prerequisite to an enforceable bond. 74 Am. Jur. 2d, Suretyship § 17 (1974); see also Stearns, The Law of Suretyship § 3.5 (5th ed. 1951).

In light of this conflicting legal authority, we cannot conclude with certainty whether the surety here would be able to disclaim liability on the bond because of the absence of the signature of its attorney-in-fact. Thus, we believe that the contracting officer acted reasonably in concluding that the bond was defective and therefore rejecting the bid.

It is irrelevant that Truesdale properly signed the bid and bond forms as principal and that the penal sum of the bond was in the proper amount. The lack of the signature of the surety's representative was alone sufficient to raise serious questions regarding the bond's validity and consequently, as indicated above, provided a sufficient basis for the contracting officer to find the bid nonresponsive. Moreover, since a nonresponsive bid cannot be made responsive by actions taken after bid opening, Baucom Janitorial Services, Inc., supra, the attorney's offer to sign the bond, and the surety's offer to provide payment and performance bonds, coming as they did after bid opening, cannot cure the defect in the bond.

The protest is summarily denied.

for *Harry R. Van Cleave*
Comptroller General
of the United States